

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

FILED
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DANIELA L. HITCH, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICH
DLM

LORENZO ANTHONY,

Plaintiff,

v.

Case No. 2:05-cv-66
HON. GORDON J. QUIST

LINDA MAKI, et al.,

Defendants.

_____ /

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S

REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action. The Report and Recommendation was duly served on the parties. The Court has received objections from the plaintiff and defendants. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made.

Plaintiff alleges that his Eighth Amendment claim should not be dismissed because as a matter of law the deprivation of a mattress is the deprivation of one of life's necessities. The Sixth Circuit has held that the deprivation of a mattress does not support an Eighth Amendment claim. *Grissom v. Davis, et al.*, 55 F. Appx. 756, 757 (6th Cir. Feb. 12, 2003). Further, plaintiff was transferred to a different prison and he is not entitled to injunctive relief.

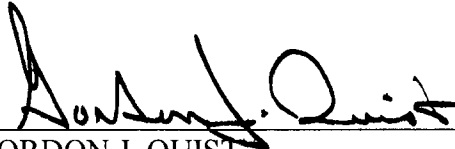
Defendants argue that plaintiff's allegation that he threatened to file a legal proceeding is insufficient to show that plaintiff engaged in protected conduct for purposes of supporting a retaliation claim. Defendant allegedly told plaintiff that plaintiff would not receive food

if plaintiff continued to complain and file grievances. The protected conduct included the filing of grievances and not just the threatened legal action. A genuine issue of material fact exists as to whether defendants retaliated against plaintiff. This court cannot make a credibility determination on a motion for summary judgment. Contrary to defendants assertion of a credibility determination, the court has concluded that a genuine issue of material fact exists which cannot be resolved on a dispositive motion. Similarly, a question of material fact exists on plaintiff's equal protection and conspiracy claims.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that defendants' motion for summary judgment (docket #13) is GRANTED with regard to plaintiff's Eight Amendment claims and DENIED with regard to plaintiff's retaliation, equal protection and conspiracy claims.

Dated: _____



GORDON J. QUIST
UNITED STATES DISTRICT JUDGE